FILED

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OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

STERLING CONSULTING CORPORATION,
a Colorado corporation, as receiver for the
Indian Motorcycle Manufacturing Inc.,
a New Mexico corporation,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SUPPLEMENTAL APPENDIX FOR WRIT OF CERTIORARI

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13 pp

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC.
Plaintiff,

v.

INDIAN MOTORCYCLE MANUFACTURING, INC.,
a New Mexico Corporation,
Defendant,

v.

UNITED STATES OF AMERICA, on behalf of
THE INTERNAL REVENUE SERVICE,
Intervenor.

Filed June 6, 1997

UNITED STATES OF AMERICA'S MOTION TO
INTERVENE PURSUANT TO RULE 24, FED. R. CIV. P

The United States of America, by and through its undersigned attorneys, Henry L. Solano, United States Attorney for the District of Colorado, William G. Phara, Assistant United States Attorney and Susan A. Berson, Senior Trial Attorney, United States Department of Justice, Washington, D.C., on behalf of its agency the Internal Revenue Service, hereby moves for an Order from this Court permitting it to intervene in this action pursuant to Rule 24, Fed.R.Civ.P. In support, the United States shows the Court as follows, and also refers the Court to its Opposition to the parties Motion for Order Authorizing Settlement with Michelle Marie Lean, and Declaration of Revenue Officer

Joyce Peneau And Accompanying Government Exhibits 1 through 18, simultaneously filed herewith.

1. The present Motion was filed by the receiver in this proceeding apparently as a result of a dispute as to whether Ms. Michelle Marie Lean has an interest in the assets of Michael Mandelman. Mr. Mandelman through his business, Mandelman Group, has an ownership interest in the defendant, Indian Motorcycle Manufacturing. Motion, ¶3, 4, and 6. The Motion seeks approval from this Court of disbursements to Ms. Lean in amounts equal to (1) 2.5% of the equity in a related Mandelman entity referred to as "Combined Estates", (2) an amount of $230,000.00, and (3) 15% of another Mandelman related entity referred to as the "European Corporation" as stated in the Agreement at paragraph 1.

2. Mr. Mandelman owes the United States unpaid tax liabilities in excess of $1,000,000.00. See Declaration of Joyce Peneua, ¶4 [hereinafter "Peneau Declaration"], and Government Exhibits 1 through 15. The Internal Revenue Service has filed Notices of Federal Tax Lien against Mr. Mandeltuan for the taxable years 1988 through 1993. Set Government Exhibits 1 through 15.

3. Mr. Mandelman has used Ms. Lean to hide his assets from his creditors, *including* the Internal Revenue Service. Peneau Declaration, *¶'s 6, 7,* and 8.

4. While Ms. Lean claims to be a former business associate of Mr. Mandelman's and have an equity interest in some of Mr. Mandelman's business holdings, Motion, ¶4, this is directly contrary to Ms. Lean's financial statement as of July 30, 1996, marked as Government Exhibit 17. See also Peneau Declaration. ¶'s 8, 9, 11 and 12. On the financial statement, Ms. Lean lists only a loan receivable made to Mandelman in the amount of $20,000.00 in Australian

dollars. Now, by the Motion, she seeks more than $200,000.00 for an undocumented $20,000.00 loan receivable. Thus, it appears that either Mr. Mandelman is continuing to use Ms. Lean to transfer assets to himself indirectly in an attempt to evade the payment of his tax liability, Peneau Declaration, ¶'s 11 and 12, or Ms. Lean it attempting to obtain a large return on her undocumented $20,000.00 loan.

5. In accordance with Rule 24, Fed.R.Civ.P., upon good *cause shown,* the Court may permit intervention (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Set also Hallco Mfg., Co. v. Quaeck, 16 F.R.D., 98, 101 CD. Or. 1995) (which addresses the similar *provisions* of Rule 24, and quotes Sierra Club v. United States Envtl. Protection Agency, 995 F.2d. 1478, 1461 (9th Cir. 1993)); Yorkshire v. United States, 26 F. 3d 942, 944 (9th Cir. ((citation omitted), cert. Denied sub nom., S.P Co. v. Yorkshire, 115 S.Ct. 487 (1994)

6. The rules "interest" requirement obligates the United States to prove that it has a "significantly protectable" interest in the property at issue in this litigation. The United States has satisfied this prerequisite. The Notices of Federal Tax Lien marked as Government Exhibits 1 through 16, and the Declaration *of* Joyce Perteau establish Mr. Mandelman has an unpaid. tax liability to which the federal tax lien has attached to all Mr. Mandelman's property arid rights to property under Sections 6321, 6322, and 6331 of the Internal Revenue Code. See also United States v. City of New Britain, 347 U.S. 81 (1954)

7. The United States must intervene in this action since it is not adequately represented by the parties. The interests of no party match the United States in collecting Mr. Mandelman's tax debt. Based on the Motion filed by the parties for an Order Approving the Settlement with Michelle Marie Lean, it appears that either Mr. Mandelman is once again attempting to use Ms. Lean to hide assets and evade the payment of his tax liability, or Ms. Lean is attempting to profit at the expense of the United States.

8. The United States does not believe that Ms. Lean has provided evidence of a valid interest in the defendant's property to this Court. The Letter of Agreement referenced by the Motion is insufficient to refute the financial statement provided by Ms. Lean to the IRS, and the IRS investigation of Mr. Mandelman's concealment of assets. Nevertheless, to the extent this Court determines Ms. Lean has an interest, if any, in the defendant or Mr. Mandelman's businesses, the United States' federal tax lien is superior to Ms. Lean's claim pursuant to Sections 6321, 6322, and 6331 of the Internal Revenue Code. As a consequence, the United States' interest would suffer detrimentally if distributions were made to Ms. Lean as proposed by the Settlement Agreement between Michelle Marie Lean and the Receiver. Thus, the United States should be allowed to intervene in this action to protect its interest pursuant to Rule 24, Fed.R.Civ.P.

9. A [proposed] Order has been submitted with this Motion. WHEREFORE, the United States of America, on behalf of the Internal Revenue Set-vice, hereby respectfully requests that it be allowed to intervene in this action to protect its legally recognizable interest in the assets of the defendant, as a related entity of Michael Mandelman and the Mandelman Group.

Dated this 4th day of June 1997.

HENRY L. SOLANO
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC.
Plaintiff,

v.

INDIAN MOTORCYCLE MANUFACTURING, INC.,
a New Mexico Corporation,
Defendant,

v.

UNITED STATES OF AMERICA, on behalf of
THE INTERNAL REVENUE SERVICE,
Intervenor.

Filed June 9, 1997

ORDER GRANTING UNITED STATES'
MOTION TO INTERVENE

This matter came before the Court upon the United States of America's Motion to Intervene pursuant to Rule 24, Fed.R.Civ.P. After reviewing the pleadings and for good cause being shown, it is hereby,

ORDERED that the United States of America's Motion to Intervene is granted.

DATED THIS 9th day of June, 1997

BY THE COURT:
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-Z-777

INDIAN MOTORCYCLE MANUFACTURING, INC.,
a New Mexico Corporation,
Defendant,

v.

UNITED STATES OF AMERICA, on behalf of
THE INTERNAL REVENUE SERVICE,
Intervenor.

Filed February 20, 2001

NOTICE OF TRUSTEE'S STATUS REPORT FILED WITH THE MASSACHUSETTS BANKRUPTCY COURT

Sterling Consulting Corporation, as receiver, hereby provides notice that Stephan M. Rodolakis, Esquire, the acting Chapter 7 bankruptcy trustee (the "Trustee") in the actions known as *In Re: Indian Motocycle Company, Inc., In Re: Indian Motocycle Manufacturing Company, Inc., and In Re: Indian Motocycle Apparel Company, Inc.*, Cases No. 93-41354 - HJB, 94-42288-HJB, 93-41955-}{JE filed his Trustee's Status Report with the Massachusetts Bankruptcy Court on February 13, 2001. A copy of the Trustee's Status Report is attached to this Notice.

Dated this 20th day of February, 2001
Respectfully submitted,

Sterling Consulting Corporation,
As Receiver,
By Richard A. Block, President

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

Bankruptcy Nos. 93-41954-HJB, 93-41955-HJB,
94-42288-HJB (administratively consolidated)

In re:
INDIAN MOTOCYCLE CO., INC.,
Debtor

INDIAN MOTOCYCLE APPAREL AND ACCESSORIES CO., INC.,
Debtor

INDIAN MOTOCYCLE MANUFACTURING CO., INC.,
Debtor

Filed February 13, 2001

TRUSTEE'S STATUS REPORT

Chapter 7 Trustee Stephan M. Rodolakis (the "Trustee") provides this Court and the parties in interest in this matter with the following status report.

As all parties undoubtedly recall, the assets of the above Debtors were combined, for purposes of sale, with the assets of that receivership action in the Federal District Court for the District of Colorado styled *Filer Industries, Inc.*, v, *Indian Motorcycle Manufacturing, Inc.*, Docket Number 95-Z-777 (the "Receivership" and the "Coordinated Sale"). The Coordinated Sale agreement was reached after contentious litigation between the Receiver and the Trustee's predecessor. Thereafter, the assets of the combined estates were marketed. Suitors came and went. Eventually, IMCOA Licensing America, Inc., ("IMCOA") submitted an offer which was accepted This Court and the Receivership Court

both approved sale of the assets of the combined estates to IMCOA. The sale approval process was complicated somewhat by a disagreement which had arisen between the Trustee and the Receiver as to the allocation of sales proceeds. To avoid losing the sale, the parties agreed upon the delivery of $3,500,000.00 of sale proceeds to the Trustee, subject to claims by the Receiver for return of any amounts to which the Receiver was entitled. This Court approved that arrangement and the sale closed in February of 1999. After the sale had closed, the Trustee and the Receiver engaged in heated litigation over the funds held by the Trustee. Settlement negotiations were excruciating. A settlement in principle was eventually reached. Documenting the agreement was also painstaking and anything but simple. The settlement agreement was eventually approved by both this Court and the Receivership Court. With the settlement approved, the Trustee was able to move forward to filing a final report. On December 30, 1999, this Court approved the Trustee's final report.

Among the terms of the final report approved by this Court was the distribution of $1.2 Million Dollars to the Receiver, to bold as escrow agent for the payment of any tax liabilities of the three debtors. Further, the Receiver (the holder of aft of the stock of the three debtors) undertook the obligation to obtain approval of the Debtors' final tax returns. The $1.2 Million Dollar "escrow" figure was provided by a representative of the Internal Revenue Service, who indicated that this amount was the absolute maximum possible tax liability for the debtors. After the Trustee's Final Report was approved, the Trustee paid all administrative claims in full, made a distribution of approximately 61% to unsecured claims and remitted the remaining $1.2 Million to the Receiver.

The IRS appealed the order approving the Final Reports, and that appeal is pending.

The Receiver filed a motion with the Receivership Court seeking a determination that the Debtors' tax returns were correct and that no taxes were due. The IRS opposed the motion. The Receivership Court issued an order that it would rule on the propriety of the returns and gave the IRS a period of time to interpose substantive objections. The IRS appealed the ruling of the Receivership Court on the basis that the Court had no jurisdiction to determine the propriety of the tax returns. That appeal is pending with the Tenth Circuit Court of Appeals.

Later, the IRS moved for relief from this Court's order approving the Trustee's agreement with the Receiver which limited the amount of funds available to pay Bankruptcy estate claims at *$3.5* Million. Upon denial of its motion, the IRS appealed to the Bankruptcy Appellate Panel. *That* appeal is also currently pending.

The Trustee understands that when the IRS auditor assigned to the Debtors' returns originally reviewed the returns, she made determinations with respect to prior year returns which left it highly unlikely, if not impossible, that any monies would be owed for the final year's return. However, she was apparently subsequently instructed to find problems with the Debtors returns. The transparent reasoning behind this directive is that the IRS does not like the procedure employed by the Trustee and the Receiver to have the returns approved, even though the procedure gave the IRS ample time to interpose substantive objections (which the IRS chose not to do). Armed with an apparently limitless supply of time and taxpayer funds, the IRS is manufacturing a dispute on the merits because it dislikes the procedure employed. Unhampered by the rational litigation philosophy that you do not waste resources contesting substantive matters with which you have no real disputes the IRS persists in remaining the sole impediment to distributing funds to claimants. Claimants in these cases are almost exclusively U.S.

taxpayers who (depending on individual circumstances) would likely be required to pay taxes on their recovery in any event.

The thrust of the argument that the IRS has concocted as the basis for a dispute on the merits of the tax returns (thereby giving the illusion of rationality to the decision to contest the procedure) is that more of the proceeds of the sale of the assets of the combined estates should be allocated to the Debtors. The underlying assumption seems to be that the Trustee and the Receiver conspired to recharacterize sale proceeds which had actually been received by the Debtors as having been paid to the Receiver in order to avoid taxes on the finds received by the Trustee. A rational observer with the benefit of having read the pleadings in this case and in the Receivership proceeding could discern that the fight between the Trustee and the Receiver for sale proceeds was real and intense. It is unclear to the Trustee how a conclusion could be ever be drawn that the sparring between the Trustee and the Receiver over sale proceeds was a conspiratorial charade designed to hide the true economics of the sale from the government.

In any event, until all appeals are resolved, no further distributions may be made.

STEHPAN M. RODOLAKIS,
Chanter 7 Trustee
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